

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2353 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KHALID KHAN

Versus

ONGC THROUGH CHAIRMAN

Appearance:

MR GIRISH PATEL for Petitioner
Mr. Vyas for M/S TRIVEDI & GUPTA for Respondent
Nos.1,2 and 3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/01/97

ORAL JUDGMENT :

1. Rule. Mr.Vyas for M/s.Trivedi and Gupta waives service of Rule on behalf of respondents. On the request of the parties, the matter is taken up for final hearing today.
2. It is the common case of the parties that the petitioner was appointed as Telex Operator. However,

petitioner's case is that although he was appointed as Telex Operator by order dated 25.9.70 he had actually been operating wireless sets. In 1980 when new service Rules came, the petitioner was re-designated as Assistant Grade II and since then he has been working as an Assistant Grade II. The ONGC has come with the case that there being no promotional avenues for Telex Operators and because of the fact that the Telex Operators could not be fitted in any technical post except that of Assistant Grade II, the petitioner was made Assistant Grade II and with a view to advance and give more promotional avenues to the employees like the petitioner, who were working with the designation of Telex Operators, the post of Telex Operator was merged into Assistant, Grade II. The ONGC has further come with a case in the reply in response to the notice issued by this court that in case of merger of the post of Telex Operator in the post of Assistant Grade II one becomes eligible for consideration for promotion to the post of Assistant Grade I with effect from 1.4.82 and for further consequential consideration for promotion to the post of Superintendent (P&A) i.e. Class II post from the date his junior in the redesignated post of Assistant Grade I had been promoted. It is also the case of the ONGC that the petitioner's case was considered for promotion to the post of Assistant Grade I with effect from 1.1.83 and the orders were accordingly issued. But the petitioner refused to accept the said post apprehending that he had no career after merging with Assistant Grade II, which apprehension was wholly unfounded. It has also been submitted on behalf of the ONGC that Reference (ITC) No.31/84 had been made at the instance of the ONGC Employees' Association, Ankleshwar in the following terms:

"Whether the action of the management of Oil and Natural Gas Commission Western Region, Baroda in not treating telex operators with technical qualifications at Ankleshwar as Technical hands but only as Assistants, thus denying them promotion as Assistant Marine Radio Operator, is justified and if not, to what relief are said workmen entitled and from what date?"

It is submitted on behalf of the ONGC that this Reference was rejected for want of any evidence in support of the claim set up by the Union and the learned counsel for the petitioner submits that the Union did not espouse the cause and for that reason it was dismissed.

3. Be that as it may, in the light of the pleadings of the parties it is clear that the petitioner can not claim absorption on the particular post of Marine Assistant Radio Operator by way of redesignation as has been prayed by him in the petition because ONGC has pointed out that under the Scheme of the Rules the petitioner is not eligible for appointment as Marine Assistant Radio Operator and it has not been shown even by the petitioner that he meets the requirements for absorption by way of redesignation as Marine Assistant Radio Operator. Yet this position is clearly established on record by the reply given by the ONGC itself that the petitioner could be made Assistant Grade I with effect from 1.1.83 as has been stated in para 13 of this reply at internal page Nos.18 and 19 i.e. page Nos.67 and 68 of the paper book. It is also clear that at that time petitioner had refused to accept the said post on the basis of some illfounded apprehension. The petitioner has been serving with ONGC since 1970 first on wireless sets on the strength of appointment as Telex Operator and subsequently as Assistant Grade II by way of redesignation with the coming into force of the new service Regulations. In the facts and circumstances of this case, the respondent-Corporation may even now keep the offer open to the petitioner so as to appoint him as Assistant Grade I with effect from 1.1.83 as was offered to him earlier as stated by the Corporation itself and in case the petitioner now makes a representation confined to this limited request, the Corporation shall consider the same as if the petitioner's request was being considered in the year 1983 for appointment as Assistant Grade I with effect from 1.1.83 and if the petitioner is appointed as Assistant Grade I with effect from 1.1.83 the ONGC shall also pass appropriate orders in accordance with Rules so as to grant all consequential benefits to the petitioner as if the petitioner had been appointed as Assistant Grade I on 1.1.83. Appropriate orders in this regard shall be passed by the Corporation within a period of 2 months from the date the representation to this effect is submitted by the petitioner. Such consideration and the orders passed consequent to the same shall put an end to the entire controversy, which is raised through this petition.

4. With the directions as aforesaid, this Special Civil Application is allowed and the Rule is made absolute in the same terms. Direct service is permitted.